Supreme Court, U.S.
FILED
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No. _____

In the Supreme Court of the United States

October Term, 1997

CHARLES R. STRASBURGER,

Petitioner,

v.

BOARD OF EDUCATION, HARDIN COUNTY COMMUNITY UNIT SCHOOL DISTRICT NO. 1; HARDIN COUNTY EDUCATION ASSOCIATION OF THE ILLINOIS EDUCATION ASSOCIATION/ NATIONAL EDUCATION ASSOCIATION; DAN AUSTIN; DENNIS AUSTIN; DAN BRIDGES; and GERALD MILLER,

Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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App. 1

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

June 26, 1998

Before

Hon. JOEL M. FLAUM, *Circuit Judge*

Hon. FRANK H. EASTERBROOK, *Circuit Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

CHARLES R. STRASBURGER,

Plaintiff-Appellant

v.

BOARD OF EDUCATION, HARDIN COUNTY COMMUNITY UNIT SCHOOL DISTRICT NO. 1, HARDIN COUNTY EDUCATION ASSOCIATION OF THE ILLINOIS EDUCATION ASSOCIATION/
NATIONAL EDUCATION ASSOCIATION, DAN AUSTIN, DENNIS AUSTIN, DAN BRIDGES, and GERALD MILLER,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Illinois.

No. 94-CV-4272-JPG

J. Phil Gilbert, *Chief Judge*

ORDER

On consideration of the petition for rehearing with suggestion for rehearing *en banc* filed in the above-entitled cause, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing is DENIED.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CHARLES R. STRASBURGER	)	
	)	
Plaintiff,	)	
	)	
v	)	No. 94-CV-4272-JPG
	)	
BOARD OF EDUCATION, HARDIN COUNTY COMMUNITY UNIT SCHOOL DISTRICT NO. 1, HARDIN COUNTY EDUCATION ASSOCIATION OF THE ILLINOIS EDUCATION ASSOCIATION/NATIONAL EDUCATION ASSOCIATION; DAN AUSTIN; DENNIS AUSTIN; DAN BRIDGES; and GERALD MILLER	)	
	)	
Defendants	)	

JUDGMENT IN A CIVIL CASE

This action came before the Court on motion for summary judgment. After considering the motion and a decision having been duly rendered;

IT IS ORDERED AND ADJUDGED that the Hardin County Education Association of the Illinois Education Association/National Education Association is dismissed as a party to this suit.

FURTHER, IT IS ORDERED AND ADJUDGED that summary judgment is entered in favor of the Board of Education of Hardin County Unit School Dist. No. 1,

Hardin County, Illinois, Dan Austin, Dennis Austin, Dan Bridges, and Gerald Miller, and against Charles R. Strasburger.

DATE: **January 15, 1997.**

WANDA LAGER, INTERIM CLERK

/s/ K. Jane Reynolds

By: K. Jane Reynolds, Deputy Clerk

EOD: **1-16-97**

APPROVED: /s/ J. Phil Gilbert

J. PHIL GILBERT
CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CHARLES R. STRASBURGER	)	
	)	
Plaintiff,	)	
	)	
v	)	No. 94-CV-4272-JPG
	)	
BOARD OF EDUCATION, HARDIN COUNTY COMMUNITY UNIT SCHOOL DISTRICT NO. 1, HARDIN COUNTY EDUCATION ASSOCIATION OF THE ILLINOIS EDUCATION ASSOCIATION/NATIONAL EDUCATION ASSOCIATION; DAN AUSTIN; DENNIS AUSTIN; DAN BRIDGES; and GERALD MILLER	)	
	)	
Defendants	)	

MEMORANDUM AND ORDER

GILBERT, Chief Judge:

Pending before the Court is defendants'[1] motion for summary judgment. (Doc. 49). Plaintiffs have filed a response to the defendants' motion for summary judg-

[1] Hereinafter the Court will refer to the Board of Education of Hardin Community Unit School District No. 1, Hardin County, Illinois, Dan Austin, Dennis Austin, Dan Bridges, and Gerald Miller as "defendants". In the Court's order entered July 24, 1995, Hardin County Education Association was dismissed as a party to this case.

ment (Doc. 56) and defendants have filed a reply to the response. (Doc. 58).

Plaintiff's complaint alleges four counts: 1) that the school board defendants violated the plaintiff's substantive due process rights by depriving him of a liberty interest in relation to his termination in June 1994; 2) that the school board defendants violated plaintiff's substantive due process rights by depriving him of a property interest in his continued employment with the board; 3) the school board defendants and Hardin County Education Association are liable for a violation of the associations's (sic) duty of fair representation under federal law, and; 4) that the school board defendants are liable for a state law claim of intentional infliction of emotional distress.

Defendants assert that plaintiff's liberty interest claim fails because plaintiff cannot establish that the defendants made false or stigmatizing remarks; that plaintiff suffered a tangible loss of other employment opportunities; and finally, that the state law provides an adequate remedy for the alleged due process violations. Doc. 49 at 2. Second, defendants assert that the plaintiff's property interest claim must fail because the plaintiff received adequate process to protect his interest when he was terminated pursuant to a reduction in force ("RIF"). *Id.* Third, defendants assert that plaintiff's claim of intentional infliction of emotional distress must fail because as

a matter of law, plaintiff cannot establish that defendants acted in an extreme or outrageous manner as required to support a claim of intentional infliction of emotional distress. *Id.* Fourth, the individual defendants assert that they are entitled to qualified immunity. Finally, the defendants allege that any request for punitive damages should be stricken because the plaintiff is not entitled to punitive damages against the School Board Defendants as a matter of federal and state law.[2] *Id.* at 3.

I. FACTS

The plaintiff was hired by the School Board of Hardin County commencing with the 1991-1992 school year, and was granted tenure in March of 1993. Doc. 49, Ex. A., Pl.['s] Dep. at 98-99. On November 9, 1993, a new board of Education was seated and that Board voted on November 11, 1993, to suspend plaintiff with pay from certain of his duties within the school district. Doc. 49, Ex. E. Plaintiff was later reinstated after an investigation into plaintiff's prior criminal history. Subsequent to reinstatement, the School Board voted at a March 10, 1994, meeting to terminate plaintiff effective June 30, 1994. Doc. 49 at 6. After completing the school year at Hardin County, plaintiff left Hardin County to teach at another school district beginning the next school year. Doc. 50, Ex. A, Pl.['s] Dep. At 10-11.

[2] Because the remaining issues render this defense moot, the Court declines to address the issue of availability of punitive damages.

Summary Judgment

A court may grant summary judgment only if the party seeking summary judgment demonstrates that no genuine issue of facts exists for trial and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(e); *Wilson v. Chicago, Milwaukee, St. Paul & Pacific R.R. Co.*, 841F.2d 1347, 1354 (7th Cir. 1988). If that showing is made and the motion's opponent would bear the burden at trial on the matter that forms the basis of the motion, the opponent must come forth with evidence to show what facts are in actual dispute. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *Donald v. Polk County*, 836 F.2d 376, 379 (7th Cir. 1988).

When the parties dispute the facts, the parties must produce proper documentary evidence to support their contentions. The parties cannot rest on mere allegations in the pleadings, *Boruski v. United States*, 803 F.2d 1421, 1428 (7th Cir. 1986), or upon conclusory allegations in affidavits. *First Commodity Traders, Inc. v. Heinold Commodities*, 766 F.2d 1007, 1011 (7th Cir. 1985). The Court must view the evidence and any permissible inferences from the materials before it in favor of the non-moving party, *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986), as long as the inferences are reasonable. *Davis v. City of Chicago*, 841 F.2d 186, 189 (7th Cir. 1988). The non-moving party must show that the disputed fact is material; that is, it must be outcome-deter-

minative under the applicable law. *Wainwright Bank & Trust Co. v. Railroadmens Fed. Sav. & Loan Ass'n*, 806 F.2d 146, 149 (7th Cir. 1986).

II. ANALYSIS

A. DUE PROCESS

The Due process clause of the Fourteenth Amendment encompasses three types of protection. *Zinermon v. Burch*, 494 U.S. 113, 125, 110 S. Ct. 975, 983 (1990). The first type consists of a claim based on a violation of a specific provision listed in the Bill of Rights. *Id.* The second type of protection, referred to as substantive due process, bars certain arbitrary, wrongful government action. *Id.* In both of these situations, a constitutional violation is complete at the time the wrongful action is taken. *Id.*

In addition, the Due Process Clause contains guarantee of fair procedures. *Id.* Under this type of claim, the constitutional violation does not occur when the deprivation occurs, but rather only if the state fails to provide due process. *Id.* at 126, 110 S. Ct. at 983. Thus, an inquiry into the adequacy of the process provided by the state is necessary to determine whether a constitutional violation occurred. *Id.*

Plaintiff does not contend that the actions of the defendants violated a specific provision of the Bill of Rights. Also, he does not contend that the procedure pro-

vided under state law was inadequate. Thus, the Court is concerned solely with a substantive due process claim. To establish a due process claim, the plaintiff must show: (1) that the claimed interest is a protected property or liberty interest under the Fourteenth Amendment; (2) that the alleged loss amounted to a deprivation; and (3) that the deprivation was without due process of law. *Polenz v. Parrott*, 883 F.2d 551, 555 (7th Cir. 1989). Liberty interests may flow directly from the Fourteenth Amendment or may be created by state law. *Id.* Property interests are not created by the Constitution, but rather from an independent source, such as state law, where plaintiff demonstrates a legitimate claim of entitlement. *Id.*

a. Liberty Interest

In its order of July 24,1995, the Court noted that the Seventh Circuit has held a liberty interest is implicated when three factors are present: (1) the employee is stigmatized by the defendant's conduct; (2) the stigmatizing information is publicly disclosed; and the employee suffers a tangible loss of other employment opportunities as the result of the disclosure. *McMath v. City of Gary*, 976 F.2d 1026, 1031 (7th Cir. 1992); *see accord Harris v. City of Auburn*, 27 F.3d 1284, 1286 (7th Cir. 1994) (*citing Johnson v. Martin*, 943 F.2d 15, 16 (7th Cir. 1991) (*citing Paul v. Davis*, 424 U.S. 693, 701,96 S.Ct. 1155, 1160-61, 47 L.Ed.2d 405 (1976)). Furthermore, the publication of stigmatizing information by the defendant does not need to be concur-

rent with the termination as long as there is a nexus between the firing and the publication. *Id.* at 1032. Although this Court held that a liberty interest was shown by plaintiff in its July 24, 1995, order, that determination was made pursuant to the liberal standards applicable to a motion to dismiss. The Court will now approach the issue of whether a liberty interest was implicated following the standards for summary judgment. Because the third factor of the standard set forth above is outcome determinative to the instant case, the Court will give short treatment to the first and second factors of this standard.

i. Was plaintiff stigmatized?

Plaintiff must first establish that he was stigmatized by the defendants' conduct. Plaintiff asserts that the individual school board members "falsely accused Strasburger of dishonest and unethical acts." Doc. 1 at 5. More specifically, plaintiff alleges that defendants circulated his criminal history, publicly accused plaintiff of accepting illegal kickbacks on a tennis shoe contract, questioned plaintiff's fitness to work with children, and characterized plaintiff as a rapist.

In order to implicate the plaintiff's liberty interest when the board of education terminated plaintiff it must have made "false or substantially inaccurate public charges or statements that stigmatize the employee . . . ." *Wallace v.Tilley* 41F.3d 296, 299 (7th Cir. 1994). In the case at bar,

publicly disclosing plaintiff's criminal history was neither false or inaccurate. Plaintiff does not deny his criminal record.

Plaintiff also protests that there were rumors within the Hardin County community about his fitness to work with children and his being a rapist. In order for stigmatizing rumors to be actionable under Section 1983, the rumors must have been spoken by a public actor. Plaintiff fails to establish that these rumors were from the mouths of members of the Board of Education. Doc. 50, Ex. A, Pl.['s] Dep. At 197-98. In addition, plaintiff has not presented evidence that the defendants were public actors at the time of these stigmatizing rumors.[3]

Finally, plaintiff contends that stigmatizing remarks were made regarding plaintiff taking "kickbacks" from a tennis shoe contract while employed by Hardin County School District. Unfortunately for plaintiff, he cannot refer the Court to a deposition or affidavit that sets forth evidence of a stigmatizing statement regarding the alleged tennis shoe contract.[4] Thus, plaintiff's liberty interests

[3] In his July 18, 1996, deposition, past Board of Education member Edward Lafferty responds to the question "Q. Were there generally rumors in the community at that point that Charlie Strasburger was a rapist? A. I only heard the word rape [on] one occasion, and I recall saying that there was no evidence to that effect." Doc. 51, Dep. of Edward Lafferty at 24-25.

[4] "It is not our function to scour the record in search of evidence to defeat a motion for summary judgment; we rely on the nonmoving party to identify with reasonable particularity the evidence upon which he relies." *Bombard v. Fort Wayne Newspapers, Inc.*, 92 F.3d 560, 562 (7th Cir. 1996).

cannot be implicated where plaintiff has failed to establish that stigmatizing remarks were made.

ii. Was stigmatizing information publicly disclosed?

In addition to stigmatizing the plaintiff the stigmatizing information must be publicly disclosed. "Absent proof that the defendants disseminated the stigmatizing information beyond the appropriate chain of command . . . [plaintiff's liberty interest claim] cannot succeed." *McMath v. City of Gary, Ind.*, 976 F.2d 1026, 1032 (7th Cir. 1992). Plaintiff presents evidence that a derogatory letter was copied and distributed under the windshields of cars in a public parking lot. Doc. 57, Dep. of Edward Lafferty at 59-61. Assuming, *arguendo*, that defendants used stigmatizing information against the plaintiff, plaintiff has shown that such information was publicly disclosed.

iii. Did plaintiff suffer a tangible loss of other employment opportunity?

Finally, as set forth in *McMath*, plaintiff must establish that he suffered a tangible loss of other employment opportunities as the result of the disclosure of stigmatizing information disclosed by the defendants. *McMath v. City of Gary* 976 F.2d 1026, 1031 (7th Cir. 1992). In *Mahoney v. Kesery*, the Seventh Circuit stated that stigmatizing conduct that impinges upon the plaintiff's lib-

erty interest must "prevent him [the plaintiff] from obtaining *comparable* employment. *Id.* at 976 F.2d 1054, 1060 (7th Cir. 1992) (emphasis added).

In *Lashbrook v. Oerkfitz*, 65 F.3d 1339 (7th Cir. 1995), the Seventh Circuit held that "denial of a liberty interest requires more than being just fired." *Id.* at 1348. The court noted that to infringe on an employee's liberty interest, "the circumstances of the termination must make it virtually impossible for the employee to find new employment in that field." *Id. (citing Ratliff v. City of Milwaukee*, 795 F.2d 612, 625 (7th Cir. 1986)). In the case at bar, plaintiff was allowed to complete the school year at Hardin County, and was then hired the next school year at Carmi High School as a teacher. Doc. 50, Ex. A, Pl.['s] Dep. at 10. Perhaps most damaging of all, plaintiff admitted at his deposition on January 16, 1996, that he cannot identify any specific employment opportunities that he lost as a result of what defendants allegedly said about the plaintiff. Doc. 50, Ex. A, Pl.['s] Dep. at 235. Thus, plaintiff cannot satisfy the third factor required to implicate his liberty interests by the actions surrounding the RIF at issue. Accordingly, summary judgment in favor of defendants and against plaintiff is **GRANTED** on Count II of plaintiff's complaint.

b. Property Interest

Plaintiff alleges that his property interests were violated by the School Board when he was terminated pur-

suant to a RIF.[5] Defendants concede that plaintiff had a protectable property interest in his tenured teaching position. Doc. 49 at 14. However, "[t]he mere deprivation by state action of a constitutionally protected interest is not in itself unconstitutional. What is unconstitutional is the deprivation of such an interest *without due process of law*. 'The Due Process Clause is not a guarantee against incorrect or ill-advised personnel decisions.'" *Wallace v. Tilley*, 41 F.3d 296, 299-300 (7th Cir. 1994) (*citing Collins v. City of Harker Heights*, 503 U.S. 115, 129, 112 S.Ct. 1061, 1070; 117 L.Ed.2d 261 (1992)).

Plaintiff alleges that he was deprived of his property interests when the School Board suspended and later terminated his teaching and coaching positions at Hardin County. Plaintiff reasons that because he was never invited to the meeting at which he was suspended he was deprived of his property interest. Doc. 57, Lafferty Dep. at 109. Because suspension with pay cannot form the basis of a due process claim, plaintiff's absence when the decision to suspend him was made is inconsequential. *Swick v. City of Chicago*, 11 F.3d 85 (7th Cir. 1993). Defendants assert that they complied with the established procedures

[5] In a similar case a teacher was properly dismissed due to a decrease in the number of teachers needed to teach physical education, although the total number of teachers employed by school district increased due to need for additional teachers in other departments. The school board may legitimately reduce number of teachers in one area, based upon reduced need, even when it is necessary to increase number of teachers in other areas. *Piquard v. Board of Educ. Of Pekin Community High School Dist. No. 303*, 182 Ill.Dec. 888, 242 Ill.App.3d 477 (3rd Dist. 1993).

mandated by 105 ILCS 24-12. Doc. 50, Ex. A, Pl.['s] Dep. at 62-63. In his deposition on January 16, 1996, plaintiff states that he was not present at the March 10, 1994, meeting at which the School Board voted to RIF plaintiff. *Id.* The School Board sent a letter of honorable dismissal to the plaintiff informing him of the RIF decision. *Id.*

As the Court noted in its order of July 24, 1995, *Parratt v. Taylor*, has been applied by the Seventh Circuit to substantive due process cases involving property interests. *See New Burnham Prairie Homes, Inc. v. Village of Burnham*, 910 F.2d 1474, 1480-81 (7th Cir. 1990); *Polenz*, 883 F.2d at 558-59. Accordingly, in the instant case, if the state provided plaintiff with adequate post-deprivation remedies, plaintiff cannot succeed on his property interest claim.[6]

Defendants assert that the post-deprivation remedy of wrongful termination is available to the plaintiff. Doc. 58 at 5. Defendants also assert that the actions of the Board were neither arbitrary or irrational. Doc. 50 at 15. Defendants cite *Temple v. Board of Education*, 192 Ill.App.3d 182 (1st Dist. 1989), where a tenured teacher was discharged pursuant to a RIF, the teacher filed suit in state court alleging that the board of education acted "arbitrarily and unreasonably" in dismissing the plaintiff for economic

[6] "'[T]he plaintiff must also show either a separate constitutional violation or the inadequacy of state law remedies.'" *New Burnham Prairie Homes v. Village of Burnham*, 910 F.2d 1474, 1481 (7th Cir. 1990) (*quoting Polenz*, 888 F.2d at 558).

reasons. The court, in affirming the trial court's ruling, explicitly recognized that a cause of action for wrongful termination exists with respect to a violation of reduction in force requirements. *Accord Costello v. Governing Board,* 252 Ill.App.3d 547, 191 Ill.Dec. 376 (2d Dist. 1993), *appeal denied* 155 Ill.2d 563 (1993).

In keeping with Illinois' precedent, the wrongful termination cause of action employed in *Temple* provides adequate post-deprivation remedies thereby avoiding due process violations as contemplated by the Court in *Parratt.* Plaintiff's attempt to characterize the remedies of a wrongful termination suit as inadequate due to the unavailability of punitive damages are of no avail. *Hudson v. Palmer,* 468 U.S. 517, 535, 104 S.Ct. 393 (*citing Parratt v. Taylor,* 451 U.S. 527, 101 S.Ct. 1908 (1981)). Accordingly, summary judgment in favor of defendants and against plaintiff is appropriate. Plaintiff has offered no genuine issue of material fact and judgment shall enter as a matter of law on Count I of plaintiff's complaint. Summary judgment on Count I of the plaintiff's complaint is **GRANTED**.

B. QUALIFIED IMMUNITY

"The doctrine of immunity, whether absolute or qualified 'spare[s] a defendant not only the unwarranted liability, but unwarranted demands customarily imposed upon those defending a long drawn out lawsuit.' *Wilson v. Formigoni,* 42 F.3d 1060, 1064 (7th Cir. 1994) (*quoting*

Siegert v. Gilley, 500 U.S. 226, 232, 111 S.Ct. 1789, 1793, 114 L.Ed.2d 277 (1991)). Qualified immunity protects government officials performing discretionary functions "if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* (citations omitted).

The School Board Defendants argue that they are protected by the doctrine of qualified immunity. A two-step analysis is used in evaluating the defense of qualified immunity: (1) Does the conduct violate a constitutional right and (2) Were the constitutional standards clearly established at the time in question. *Wilson v. Formigoni*, 42 F.3d 1060, 1064 (7th Cir. 1994). The first inquiry precedes the second. *Id.* If a constitutional right is not violated, there is no need to consider whether the law was clearly established at the time of the relevant conduct. *Id.* As, discussed previously by the Court, plaintiff's liberty interest and property interest claims fail under the summary judgment standard. "If a plaintiff's allegations, even when accepted as true, do not state a cognizable violation of a constitutional right, then the defendant is entitled to qualified immunity. *Wilson*, at 1064-65. Thus, here defendants are entitled to qualified immunity as plaintiff has failed to establish a violation of his liberty or property interests.

C. DUTY OF FAIR REPRESENTATION

In a footnote to defendants' motion for summary judgment (Doc. 50 at 3, fn. 1), defendants ask this Court to dismiss Count III of the complaint. For the reasons set forth in this Court's July 24, 1995, order Count III of plaintiff's complaint for violation of the duty of fair representation does not apply to the defendants.

D. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Plaintiff sets forth a state law claim for intentional infliction of emotional distress. In order to state a cause of action for emotional distress under Illinois law, a "plaintiff must allege that: (1) the defendants' conduct was extreme and outrageous; (2) the defendant either intended that his conduct should inflict severe emotional distress, or knew there was a high probability that his conduct would cause severe emotional distress; and (3) the defendants' conduct in fact caused severe emotional distress." *Carr v. Village of Richmond*, 1996 WL 663921, *7 (N.D.Ill. Nov. 15, 1996) (*citing Doe v. Calumet City*, 161 Ill.2d 374, 641 N.E.2d 498, 506 (7th Cir. 1994)).

> Conduct is extreme and outrageous where 'recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to ex-

> claim 'outrageous!' (citations omitted). Such conduct, however, must be differentiated from mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities that are part of the costs of complex society from which the law provides no protection. *Id.* Whether particular conduct is extreme and outrageous is judged on an objective standard based on all the facts and circumstances of a particular case. *Id.*
>
> Furthermore, extreme and outrageous conduct can arise from the abuse of a position of power. (Citation omitted) . . . .
>
> While all conduct is not immunized, more latitude is given to a defendant pursuing his legitimate objectives.

Carr at *7.

It is a question of law for the court to determine whether a complaint states a cause of action for an intentional infliction of mental distress *Beresky v. Teschner*, 21 Ill.Dec. 532, 536, 21 Ill.Dec. 532,381 N.E.2d 979, 983 (2nd Dist. 1978). The trial court may look to the facts of a case, stripped of all conclusions, and determine whether the conduct at issue is so extreme or outrageous as to state a cause of action for intentional infliction of emotional distress. *Id.* In the case at bar, it is undisputed that the School Board acted to terminate plaintiff's tenured teaching position. The School Board voted on March 10, 1994, to ter-

minate plaintiff by a RIF. Plaintiff was notified on or about March 11, 1994, by a letter of honorable dismissal that his position with the school was being eliminated. Thus, defendants followed the applicable procedures in "RIF-ing" the plaintiff. Extreme and outrageous conduct does not arise from a properly conducted RIF.

Next, defendants raise the statute of limitations as a bar to the claim for intentional infliction of emotional distress. Defendants assert that an action brought against a public entity or employer must be brought within one year.[7] As this case was filed on December 19, 1994, the events arising after December 19, 1993, can be considered in the action against the defendants. Only the termination of plaintiff's tenured teaching position occurred after December 19, 1993. Thus, only those facts should be considered in determining whether plaintiff has raised a genuine issue of material fact regarding the alleged intentional infliction of emotional distress. As stated above the properly followed RIF procedures do not amount to extreme or outrageous conduct. Thus, plaintiff's claim for intentional infliction of emotional distress must fail.

[7] "No civil action may be commenced in any court against a local entity or any of its employees for any injury unless it is commenced within one year from the date that the injury was received or the cause of action accrued." 745 ILCS 10/8-101. This statute includes board members in its definition of employee. 745 ILCS 10/1-202.

III. CONCLUSION

Plaintiff's counsel correctly states that "defendants cite no new precedent which should shake the Court from its earlier conclusions reached in its 7/24/95 Order." Doc. 57 Pl.['s] Br. In Resp. to Def's Mot. For Summ. J. at 1. However, under the more rigid standards of summary judgment plaintiff has failed to show that any genuine issue of material fact exists that prohibits this Court from resolving this case based on the pleadings and documentary evidence. Accordingly, summary judgment is GRANTED in favor of defendants on plaintiff's liberty and property interest claims. Plaintiff obtained employment as a teacher subsequent to the RIF. Thus, no liberty interest is implicated by the RIF. Similarly, no property interest is implicated by suspending plaintiff with pay, and adequate post-deprivation remedies exist to prevent violation of plaintiff's property interest in the tenured teaching position plaintiff held at Hardin County. Third, defendants are entitled to qualified immunity as no constitutional right of plaintiff has been violated. Finally, plaintiff has failed to establish a claim for intentional infliction of emotional distress because no reasonable juror could find that plaintiff's termination in keeping with the statutorily defined procedures found at 105 ILCS 24-12, amounted to extreme or outrageous conduct. Thus,

summary judgment **SHALL** enter in favor of defendants and against plaintiff on all counts.

IT IS SO ORDERED.
DATED: January 15, 1997.

/s/ J. Phil Gilbert
J. PHIL GILBERT
CHIEF JUDGE

Certificate of Service

The undersigned upon his oath swears that on the 8 th day of October, 1998, he served three copies of the foregoing Supplemental Appendix to Petition for Writ of Certiorari upon the following persons (attorneys of record for the Respondents who were the Appellees in the Court of Appeals) by placing this document in the United States Post Office in Marion, Illinois, with first-class postage prepaid, sent to the addresses set forth below:

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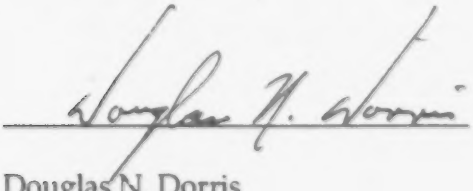

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